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In the Supreme Court of the United States

OCTOBER TERM, 1950

No. 247

KALMIA REALTY & INSURANCE COMPANY, ET AL., PETITIONERS

v.

THE UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Appeals (R. 444) is reported in 181 F. 2d 598.

JURISDICTION

The judgment of the Court of Appeals was entered May 15, 1950 (R. 445). The petition for a writ of certiorari was filed August 12, 1950. The jurisdiction of this Court is invoked under 28 U. S. C. sec. 1254(1).

QUESTION PRESENTED

Whether in a suit brought by the United States to quiet its title to land, it was rightly held that

neither the Government's grantor nor a purchaser at a sale for delinquent state and county taxes had any interest therein.

STATEMENT

The United States brought this suit against Kalmia Realty & Insurance Company and Tom Hendrix, petitioners here, to quiet title to Mississippi land conveyed to it by Kalmia by two deeds made December 29, 1933, and a third deed made November 13, 1941 (R. 2-26).

The first 1933 deed covered 481 acres in Jones County (R. 7-11). The second deed of the same date conveyed approximately 19,587.54 acres in Wayne County (R. 18-26). The 1941 deed embraced 119.3 acres in Jones County (R. 12-17).

Each 1933 deed provided (R. 8-9, 22-23):

> Reserving, however, to the Kalmia Realty and Insurance Company, its successors and assigns, for a period of Ten (10) years from December 24, 1933, with extensions as hereinafter provided, all oil, gas and other valuable minerals deposited in, on or under said tracts of land, * * *
>
> Provided: That if at the termination of the said ten year period of reservation it is found that such oil, gas, and other valuable minerals, mineral rights and interests are being operated or have been operated at any time during the preceding five years, to commercial advantage, then and in that event, the said right to mine and remove said oil, gas, and other valuable

> minerals, shall extend for a further period of five years, and further: That the right to mine and remove oil, gas, and other valuable minerals shall extend in periods of five (5) years whenever operation during the preceding five years has been for an average of 120 days per year throughout the period.
>
> * * * * *
>
> Provided: That at the termination of the ten year period, if not extended, or at the termination of any extended period, in case the operation has been carried on for the number of days and under conditions stated, the right to mine and remove oil, gas and other valuable minerals shall terminate and a complete fee in the land become vested in the United States, * * *

The 1941 deed contained a similar reservation which unless extended, would terminate July 1, 1949 (R. 13-14).

So far as concerns Kalmia, the trial court found and held (R. 391-399, 421-423):

Kalmia asserted that Raymond M. Conarro, who represented the Secretary of Agriculture in the negotiations resulting in the 1933 conveyances, falsely told its representatives that the Secretary could not permit a reservation of mineral rights for more than 10 years, and that therefore the 1933 deeds were procured by fraud. But Kalmia had failed to establish that Mr. Conarro made the statement. (Fdg. 7, R. 394-395.) In any event, since Kalmia could ascertain the Secretary's statutory

power, it could not rely on any legal representations made on his behalf (R. 423).

Kalmia further asserted that the lands conveyed in 1933 were operated to commercial advantage during the five years immediately preceding December 24, 1943, and hence that the reservation did not terminate on that date (Fdg. 5, R. 393). While Kalmia itself did not prospect for minerals, it made mineral leases from which it received $15,000 or $16,000. However, its lessees did not produce oil in commercial quantities, as required by the deeds, and accordingly the reservation did end on December 24, 1943. (Fdg. 10, R. 396; Concl. 2, R. 397.)

So far as concerns Hendrix, the facts were stipulated (R. 400-402) as follows:

For the year 1941 the State of Mississippi and Wayne County taxed the mineral interest in the 19,587.54 acres conveyed by the second 1933 deed. The taxes were not paid and Hendrix purchased at tax sales. Neither he, nor anyone acting for him, operated the mineral interest to commercial advantage. The United States has been in exclusive possession of the lands since December 24, 1943, and has granted to others oil and gas leases thereto.

Upon the basis of the stipulation, the trial court held (R. 407-412): The State and County could tax only the interest in the lands which Kalmia reserved by the 1933 deed. Consequently, the tax deeds conveyed to Hendrix only that limited interest. Since neither Kalmia nor Hendrix had ever

operated the mineral interest to commercial advantage, the interest had expired on December 24, 1943.

On May 12, 1949, the trial court entered judgment that the United States is the owner in fee simple of the lands described in the 1933 deeds and that it is the owner of the land described in the 1941 deed "subject only to the reservations, exceptions, terms and conditions of that deed".[1] Petitioners, and all claiming under them, were permanently enjoined from asserting to the contrary. (R. 419-421.)

The Court of Appeals affirmed *per curiam* (R. 444) saying: "From the standpoint of both reason and result, we think that the decision and judgment of the Court below were correct."

ARGUMENT

The decisions below are plainly correct, and petitioners present no questions calling for further review. Since the Government's title depends entirely upon the deeds it obtained from Kalmia, it is obvious that the question as to the validity and extent of the Government's interest can be completely determined by its suit against Kalmia and Hendrix, whose interest is derived from Kalmia. *United States* v. *Oregon,* 295 U. S. 1, 12, 24; *United States* v. *California,* 332 U. S. 19, 22-23. There is

[1] Since the termination date of the reservation in the 1941 deed, July 1, 1949, had not been reached when the judgment was rendered on May 12, 1949, the judgment quieting the Government's title to the land covered by that deed had to be "subject" to the reservation.

therefore no warrant for petitioners' contention (Pet. 20-25) that those to whom the Government, as the fee-owner, has leased the mineral interests are indispensable parties.

The judgment against Kalmia is clearly right. There is no basis in the record for its contention (Pet. 14-15, 76-78) that the 1933 deeds were induced by the false statement of a government employee. For, as the trial court found (R. 394), Kalmia could not show that the alleged statement was made. The lower court's interpretation of operation to "commercial advantage" under the reservation (R. 396-7) is also plainly correct.

Equally correct is the injunction against claims by Hendrix to an interest in the 19,587.54 acres sold for 1941 delinquent State and County taxes. Subject to the reservation of mineral rights, Kalmia conveyed to the United States its entire right, title and interest in these lands. Upon expiration of the reservation, the United States was to acquire "a complete fee in the land" (R. 9, 23). *Supra*, p. 3. The State and County could not tax the reversionary interest of the United States. *Van Brocklin* v. *State of Tennessee*, 117 U.S. 151, 179-180; *Clallam County* v. *United States*, 263 U.S. 341, 345; *Lee* v. *Osceola Imp. Dist.*, 268 U.S. 643, 645; *United States* v. *Allegheny County*, 322 U.S. 174, 188-189; *Cleveland* v. *United States*, 323 U.S. 329, 333. Cf. *Utah Power & Light Co.* v. *United States*, 243 U.S. 389, 403-404. In other words, they taxed—and subsequently sold to Hen-

drix—only Kalmia's balance of the ten-year term and the right to have it extended if minerals were produced in commercial quantities. *New Brunswick* v. *United States,* 276 U.S. 547, 556; *Baltimore Shipbuilding Co.* v. *Baltimore,* 195 U.S. 375, 382. Since, as Hendrix stipulated (R. 401), there was no such production, the reservation expired on December 24, 1943, and Hendrix no longer had an interest in the property.

Hendrix's contention (Pet. 25-73) that there is question whether the decisions just cited have been overruled is patently erroneous. *West* v. *Oklahoma Tax Commission,* 334 U.S. 717, 723.[2]

CONCLUSION

The judgment below is correct and the case does not warrant review. The petition for a writ of certiorari should therefore be denied.

Respectfully submitted,

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SEPTEMBER 1950.

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[2] Contrary to petitioner's contention (Pet. 43-53), the Weeks Act does not even hint at a consent by the United States to state taxation of property acquired by the United States under its provisions.

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